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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CARL SPURLOCK

APPELLANT

FILED

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SUPREME COURT
COURT OF APPEALS**

V.

NO. 2007-KA-843

STATE OF MISSISSIPPI

APPELLEE

REPLY BRIEF OF THE APPELLANT

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REPLY ARGUMENT

ISSUE NO 1: EXCLUSION OF NON-PARTY WITNESSES' PRIOR CONVICTIONS.

The State has apparently conceded Appellant's first issue by default, in citing and relying upon *Sessom v State*, 942 So. 2d 234 (Miss. App. 2006). It was Appellant Spurlock's contention that the trial court failed to properly apply the law when considering the admissibility of a non-party witnesses convictions under Rule 609 (M.R.E. 609), by denying admission into evidence multiple prior convictions of the witness. And such is the underlying principle in *Sessom, Id.*:

The Comment to Rule 609 states: "when the impeachment by convictions is of a witness other than the accused in a criminal case there is little or no unfair prejudice which can be caused to a party. **Thus, the probative value of the credibility of the witness will almost always outweigh any prejudice.**" (emphasis added)

However, as demonstrated in the record, the trial court ruled ten year old convictions were not admissible per se, without weighing prejudice against probative value. In fact the trial court opined that the balancing test was intended to balance only convictions that were less than ten years old.

As the credibility of an accomplice who provides all the evidence against a defendant is of immeasurable probative value and the State can not by definition suffer prejudice, refusal of evidence of a witnesses prior crimes must constitute reversible error. *Young v. State*, 731 So. 2d 1145 (Miss. 1999)

ISSUE NO.2: SUFFICIENCY OF UNCORROBORATED AND IMPEACHED TESTIMONY OF ACCOMPLICE.

Again the State apparently concedes this issue, citing no case law contradicting Appellant Spurlock's argument that accomplice testimony is only legally sufficient when it is both corroborated and substantially unimpeached. The case relied on by the State does not address sufficiency of evidence in the specific instance of the entire evidence coming from impeached and improbable accomplice testimony. The case cited by the State, *Kiker v. State*, 919 So. 2d 190 (Miss. App. 2005) is silent to sufficiency of an accomplice's testimony, only addressing the generic inspection of a sufficiency argument. Accomplice testimony is required to be tested more stringently, as the courts have long recognized that accomplice testimony cannot be sufficient standing alone and impeached.

In *Creed v. State*, 179 Miss. 700, 705, 176 So. 596, 597, we said: "The rule is well settled that, while a conviction may be sustained on the uncorroborated testimony of an accomplice, it is equally well settled that such a conviction should not be upheld where such testimony is improbable, self-contradictory, and unreasonable on its face, and especially where it is impeached by unimpeached witnesses. *Day v. State* (Miss.), 7 So. 326; *Wright v. State*, 130 Miss. 603, 94 So. 716; *Hunter v. State*, 137 Miss. 276, 102 So. 282; *Abele v. State*, 138 Miss. 772, 103 So. 370; *White v. State*, 146 Miss. 815, 112 So. 27; *Matthews v. State*, 148 Miss. 696, 114 So. 816; *Boutwell v. State*, 165 Miss. 16, 143 So. 479; *Harmon v. State*, 167 Miss. 527, 142 So. 473; *Rutledge v. State*, 171 Miss. 311, 157 So. 907; *Carter v. State* (Miss.), 166 So. 377.

Jones v. State, 368 So.2d 1265, 1269 (Miss. 1979) In Spurlock's trial, Lieutenant James Sharp

conceded that no evidence connected Spurlock with the crime, other than accomplice Morrison's testimony. As set out in the Appellant's Brief, Morrison the accomplice, after having plead guilty to robbery, testified under oath that he was not part of the robbery, only an observer and accessory after the fact. He accordingly must have lied under oath. Numerous additional contradictions and improbabilities are set forth in the brief are all uncontested by the State.

Hence, this issue, being essentially uncontested, must result in a reversal of this case, and in this cause being rendered.

Respectfully submitted,

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BY:


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CERTIFICATE OF SERVICE

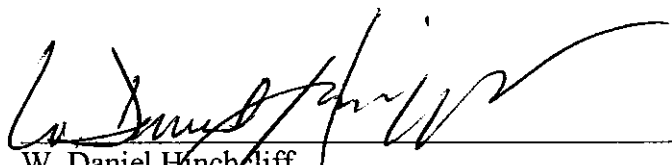
I, W. Daniel Hinchcliff, Counsel for Carl Spurlock, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **REPLY BRIEF OF THE APPELLANT** to the following:

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This the 6th day of February, 2008.


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